

NOTE: CHANGES MADE BY THE COURT

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

C & S PATENT AND LAW OFFICE,

Plaintiff,

vs.

BANK OF AMERICA, N.A.,

Defendant.

Case No. 2:18-cv-05496-DMG-JPR
Hon. Dolly M. Gee
Courtroom 8C-8th Floor

**ORDER GRANTING JOINT
MOTION AND STIPULATION FOR
PROTECTIVE ORDER**

After considering the Joint Motion and Stipulation for Protective Order filed
by the parties hereto, and GOOD CAUSE APPEARING THEREFOR,

IT IS HEREBY ORDERED:

1. **PURPOSES AND LIMITATIONS**

Disclosure and discovery activity in this action are likely to involve
production of confidential, proprietary, or private information for which special
protection from public disclosure and from use for any purpose other than
prosecuting this litigation may be warranted. Accordingly, the parties hereby
stipulate to and petition the court to enter the following Stipulated Protective Order.
The parties acknowledge that this Order does not confer blanket protections on all

1 disclosures or responses to discovery and that the protection it affords from public
2 disclosure and use extends only to the limited information or items that are entitled
3 to confidential treatment under the applicable legal principles. The parties further
4 acknowledge, as set forth in Section 12.3, below, that this Stipulated Protective
5 Order does not entitle them to file confidential information under seal; Civil Local
6 Rule 79-5.1 sets forth the procedures that must be followed and the standards that
7 will be applied when a party seeks permission from the court to file material under
8 seal.

9 2. **DEFINITIONS**

10 2.1 Challenging Party: a Party or Non-Party that challenges the designation
11 of information or items under this Order.

12 2.2 “CONFIDENTIAL” Information or Items: information (regardless of
13 how it is generated, stored or maintained) or tangible things that constitute or
14 include information that is not publicly known and that cannot be ascertained from
15 an inspection of publicly available documents and qualify for protection under
16 Federal Rule of Civil Procedure 26(c).

17 2.3 Counsel (without qualifier): Outside Counsel of Record and House
18 Counsel (as well as their support staff).

19 2.4 Designating Party: a Party or Non-Party that designates information or
20 items that it produces in disclosures or in responses to discovery as
21 “CONFIDENTIAL” or “CONFIDENTIAL-ATTORNEYS’ EYES ONLY.”

22 2.5 Disclosure or Discovery Material: all items or information, regardless
23 of the medium or manner in which it is generated, stored, or maintained (including,
24 among other things, testimony, transcripts, and tangible things), that are produced or
25 generated in disclosures, responses to discovery, or depositions in this matter.

26 2.6 Expert: a person with specialized knowledge or experience in a matter
27 pertinent to the litigation who has been retained by a Party or its counsel to serve as
28 an expert witness or as a consultant in this action.

1 2.7 House Counsel: attorneys who are employees of a party to this action.
2 House Counsel does not include Outside Counsel of Record or any other outside
3 counsel.

4 2.8 Non-Party: any natural person, partnership, corporation, association, or
5 other legal entity not named as a Party to this action.

6 2.9 Outside Counsel of Record: attorneys who are not employees of a party
7 to this action but are retained to represent or advise a party to this action and have
8 appeared in this action on behalf of that party or are affiliated with a law firm which
9 has appeared on behalf of that party.

10 2.10 Party: any party to this action, including all of its officers, directors,
11 employees, consultants, retained experts, and Outside Counsel of Record (and their
12 support staffs).

13 2.11 Producing Party: a Party or Non-Party that produces Disclosure or
14 Discovery Material in this action.

15 2.12 Professional Vendors: persons or entities that provide litigation support
16 services (e.g., photocopying, videotaping, translating, preparing exhibits or
17 demonstrations, and organizing, storing, or retrieving data in any form or medium)
18 and their employees and subcontractors.

19 2.13 Protected Material: any Disclosure or Discovery Material that is
20 designated as “CONFIDENTIAL” or “CONFIDENTIAL-ATTORNEYS’ EYES
21 ONLY.”

22 2.14 Receiving Party: a Party that receives Disclosure or Discovery Material
23 from a Producing Party.

24 2.15 “CONFIDENTIAL-ATTORNEYS’ EYES ONLY” Information or
25 Items: extremely sensitive “Confidential Information or Items,” disclosure of which
26 to another Party or Non-Party, even under the restricted terms and conditions
27 applicable to material designated “CONFIDENTIAL,” the parties believe would not
28 adequately protect the interests of the Designating Party and may only be viewed by

1 Outside Counsel of Record.

2 3. **SCOPE**

3 The protections conferred by this Stipulation and Order cover not only
4 Protected Material (as defined above), but also (1) any information copied or
5 extracted from Protected Material; (2) all copies, excerpts, summaries, or
6 compilations of Protected Material; and (3) any testimony, conversations, or
7 presentations by Parties or their Counsel that might reveal Protected Material.
8 However, the protections conferred by this Stipulation and Order do not cover the
9 following information: (a) any information that is in the public domain at the time of
10 disclosure to a Receiving Party or becomes part of the public domain after its
11 disclosure to a Receiving Party as a result of publication not involving a violation of
12 this Order, including becoming part of the public record through trial or otherwise;
13 and (b) any information known to the Receiving Party prior to the disclosure or
14 obtained by the Receiving Party after the disclosure from a source who obtained the
15 information lawfully and under no obligation of confidentiality to the Designating
16 Party. Nothing in this Order shall restrict in any way a Producing Party's use or
17 disclosure of its own Protected Material. Any use of Protected Material at trial shall
18 be governed by a separate agreement or order.

19 4. **DURATION**

20 Even after final disposition of this litigation, the confidentiality obligations
21 imposed by this Order shall remain in effect until a Designating Party agrees
22 otherwise in writing or a court order otherwise directs. Final disposition shall be
23 deemed to be the later of (1) dismissal of all claims and defenses in this action, with
24 or without prejudice; and (2) final judgment herein after the completion and
25 exhaustion of all appeals, rehearings, remands, trials, or reviews of this action,
26 including the time limits for filing any motions or applications for extension of time
27 pursuant to applicable law. The Court will retain jurisdiction over disputes arising
28 from this stipulated protective order for ninety (90) days after final disposition, as

1 defined in the preceding sentence.

2 5. **DESIGNATING PROTECTED MATERIAL**

3 5.1 **Exercise of Restraint and Care in Designating Material for Protection.**

4 Each Party or Non-Party that designates information or items for protection under
5 this Order must take care to limit any such designation to specific material that
6 qualifies under the appropriate standards. The Designating Party must designate for
7 protection only those parts of material, documents, items, or oral or written
8 communications that qualify – so that other portions of the material, documents,
9 items, or communications for which protection is not warranted are not swept
10 unjustifiably within the ambit of this Order.

11 Mass, indiscriminate, or routinized designations are prohibited. Designations
12 that are shown to be clearly unjustified or that have been made for an improper
13 purpose (e.g., to unnecessarily encumber or retard the case development process or
14 to impose unnecessary expenses and burdens on other parties) expose the
15 Designating Party to sanctions.

16 If it comes to a Designating Party's attention that information or items that it
17 designated for protection do not qualify for protection, that Designating Party must
18 promptly notify all other Parties that it is withdrawing the mistaken designation.

19 5.2 **Manner and Timing of Designations.** Except as otherwise provided in
20 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
21 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
22 under this Order must be clearly so designated before the material is disclosed or
23 produced.

24 Designation in conformity with this Order requires:

25 (a) for information in documentary form (e.g., paper or electronic
26 documents, but excluding transcripts of depositions or other pretrial or trial
27 proceedings), that the Producing Party affix the legend "CONFIDENTIAL" or
28 "CONFIDENTIAL-ATTORNEYS' EYES ONLY" to each page that contains

1 protected material. If only a portion or portions of the material on a page qualifies
2 for protection, the Producing Party also must clearly identify the protected portion(s)
3 (e.g., by making appropriate markings in the margins).

4 A Party or Non-Party that makes original documents or materials available for
5 inspection need not designate them for protection until after the inspecting Party has
6 indicated which material it would like copied and produced. During the inspection
7 and before the designation, all of the material made available for inspection shall be
8 deemed “CONFIDENTIAL” or “CONFIDENTIAL-ATTORNEY’S EYES ONLY”
9 as is appropriate. After the inspecting Party has identified the documents it wants
10 copied and produced, the Producing Party must determine which documents, or
11 portions thereof, qualify for protection under this Order. Then, before producing the
12 specified documents, the Producing Party must affix the “CONFIDENTIAL” or the
13 “CONFIDENTIAL-ATTORNEY’S EYES ONLY” legend to each page that
14 contains Protected Material. If only a portion or portions of the material on a page
15 qualifies for protection, the Producing Party also must clearly identify the protected
16 portion(s) (e.g., by making appropriate markings in the margins).

17 (b) for testimony given in deposition or in other discovery-related
18 proceedings, that the Designating Party identify on the record, before the close of
19 the deposition, hearing, or other proceeding, all protected testimony.

20 (c) for information produced in some form other than documentary and for
21 any other tangible items, that the Producing Party affix in a prominent place on the
22 exterior of the container or containers in which the information or item is stored the
23 legend “CONFIDENTIAL” or “CONFIDENTIAL-ATTORNEY’S EYES ONLY.”
24 If only a portion or portions of the information or item warrant protection, the
25 Producing Party, to the extent practicable, shall identify the protected portion(s).

26 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
27 failure to designate qualified information or items does not, standing alone, waive
28 the Designating Party’s right to secure protection under this Order for such material.

1 Upon timely correction of a designation, the Receiving Party must make reasonable
2 efforts to assure that the material is treated in accordance with the provisions of this
3 Order.

4 6. **CHALLENGING CONFIDENTIALITY DESIGNATIONS**

5 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
6 designation of confidentiality at any time consistent with the Court's scheduling
7 order. Unless a prompt challenge to a Designating Party's confidentiality
8 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary
9 economic burdens, or a significant disruption or delay of the litigation, a Party does
10 not waive its right to challenge a confidentiality designation by electing not to
11 mount a challenge promptly after the original designation is disclosed.

12 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
13 resolution process by providing written notice of each designation it is challenging
14 and describing the basis for each challenge. To avoid ambiguity as to whether a
15 challenge has been made, the written notice must recite that the challenge to
16 confidentiality is being made in accordance with this specific paragraph of the
17 Protective Order and Local Rule 37. The parties shall attempt to resolve each
18 challenge in good faith and must begin the process by conferring directly within 10
19 days of the date of service of notice. In conferring, the Challenging Party must
20 explain the basis for its belief that the confidentiality designation was not proper and
21 must give the Designating Party an opportunity to review the designated material, to
22 reconsider the circumstances, and, if no change in designation is offered, to explain
23 the basis for the chosen designation. A Challenging Party may proceed to the next
24 stage of the challenge process only if it has engaged in this meet and confer process
25 first or establishes that the Designating Party is unwilling to participate in the meet
26 and confer process in a timely manner.

27 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without
28 court intervention, the Designating Party shall file and serve a motion to retain

1 confidentiality under Civil Local Rule 37 (and in compliance with Civil Local Rule
2 79-5.1, if applicable) within 21 days of the initial notice of challenge or within 14
3 days of the parties agreeing that the meet and confer process will not resolve their
4 dispute, whichever is earlier. Each such motion must be accompanied by a
5 competent declaration affirming that the movant has complied with the meet and
6 confer requirements imposed in the preceding paragraph and in Local Rule 37.
7 Failure by the Designating Party to make such a motion including the required
8 declaration within 21 days (or 14 days, if applicable) shall automatically waive the
9 confidentiality designation for each challenged designation. In addition, the
10 Challenging Party may file a motion challenging a confidentiality designation at any
11 time consistent with the Court's scheduling order if there is good cause for doing so,
12 including a challenge to the designation of a deposition transcript or any portions
13 thereof. Any motion brought pursuant to this provision must be accompanied by a
14 competent declaration affirming that the movant has complied with the meet and
15 confer requirements imposed by the preceding paragraph and Rule 37.

16 The burden of persuasion in any such challenge proceeding shall be on the
17 Designating Party. Frivolous challenges, and those made for an improper purpose
18 (e.g., to harass or impose unnecessary expenses and burdens on other parties) may
19 expose the Challenging Party to sanctions. Unless the Designating Party has waived
20 the confidentiality designation by failing to file a motion to retain confidentiality as
21 described above, all parties shall continue to afford the material in question the level
22 of protection to which it is entitled under the Producing Party's designation until the
23 court rules on the challenge.

24 7. **ACCESS TO AND USE OF PROTECTED MATERIAL**

25 7.1 **Basic Principles.** A Receiving Party may use Protected Material that is
26 disclosed or produced by another Party or by a Non-Party in connection with this
27 case only for prosecuting, defending, or attempting to settle this litigation. Such
28 Protected Material may be disclosed only to the categories of persons and under the

1 conditions described in this Order. When the litigation has been terminated, a
2 Receiving Party must comply with the provisions of section 13 below (FINAL
3 DISPOSITION).

4 Protected Material must be stored and maintained by a Receiving Party at a
5 location and in a secure manner that ensures that access is limited to the persons
6 authorized under this Order.

7 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless
8 otherwise ordered by the court or permitted in writing by the Designating Party, a
9 Receiving Party may disclose any information or item designated
10 “CONFIDENTIAL” only to:

11 (a) the Receiving Party’s Outside Counsel of Record in this action, as well
12 as employees of said Outside Counsel of Record to whom it is reasonably necessary
13 to disclose the information for this litigation;

14 (b) the officers, directors, and employees (including House Counsel) of the
15 Receiving Party to whom disclosure is reasonably necessary for this litigation;

16 (c) Experts (as defined in this Order) of the Receiving Party to whom
17 disclosure is reasonably necessary for this litigation and who have signed the
18 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

19 (d) the court and its personnel;

20 (e) court reporters and their staff, professional jury or trial consultants,
21 mock jurors, and Professional Vendors to whom disclosure is reasonably necessary
22 for this litigation;

23 (f) during their depositions, witnesses in the action to whom disclosure is
24 reasonably necessary. Pages of transcribed deposition testimony or exhibits to
25 depositions that reveal Protected Material must be separately bound by the court
26 reporter and may not be disclosed to anyone except as permitted under this
27 Stipulated Protective Order;

28 (g) the author or recipient of a document containing the information or a

1 custodian or other person who otherwise possessed or knew the information;

2 (h) the parties to this action; and

3 (i) any mediator who is assigned to hear this matter, and his or her staff.

4 7.2 Disclosure of “CONFIDENTIAL-ATTORNEYS’ EYES ONLY”

5 Information or Items. Unless otherwise ordered by the court or permitted in writing
6 by the Designating Party, a Receiving Party may disclose any information or item
7 designated “CONFIDENTIAL-ATTORNEYS’ EYES ONLY” only to:

8 (a) the Receiving Party’s Outside Counsel of Record in this action, as well
9 as employees of said Outside Counsel of Record to whom it is reasonably necessary
10 to disclose the information for this litigation.

11 (b) Experts (as defined in this Order) of the Receiving Party to whom
12 disclosure is reasonably necessary for this litigation and who have signed the
13 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

14 (c) the court and its personnel;

15 (d) court reporters and their staff, professional jury or trial consultants,
16 mock jurors, and Professional Vendors to whom disclosure is reasonably necessary
17 for this litigation;

18 (e) during their depositions, witnesses in the action to whom disclosure is
19 reasonably necessary. Pages of transcribed deposition testimony or exhibits to
20 depositions that reveal Protected Material must be separately bound by the court
21 reporter and may not be disclosed to anyone except as permitted under this
22 Stipulated Protective Order;

23 (f) the author or recipient of a document containing the information or a
24 custodian or other person who otherwise possessed or knew the information; and

25 (i) any mediator who is assigned to hear this matter, and his or her staff.

26 8. **PROTECTED MATERIAL SUBPOENAED OR ORDERED**
27 **PRODUCED IN OTHER LITIGATION**

28 If a Party is served with a subpoena or a court order issued in other litigation

1 that compels disclosure of any information or items designated in this action as
2 “CONFIDENTIAL,” or “CONFIDENTIAL-ATTORNEYS’ EYES ONLY” that
3 Party must:

4 (a) promptly notify in writing the Designating Party. Such notification
5 shall include a copy of the subpoena or court order unless prohibited by law;

6 If the Designating Party timely seeks a protective order, the Party served with
7 the subpoena or court order shall not produce any information designated in this
8 action as “CONFIDENTIAL” or “CONFIDENTIAL-ATTORNEYS’ EYES ONLY”
9 before a determination by the court from which the subpoena or order issued, unless
10 the Party has obtained the Designating Party’s permission or a court so orders. The
11 Designating Party shall bear the burden and expense of seeking protection in that
12 court of its confidential material. Nothing in this order authorizes a party to disobey
13 a lawful court order or subpoena.

14 9. **SECTION UNUSED**

15 10. **UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

16 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
17 Protected Material to any person or in any circumstance not authorized under this
18 Stipulated Protective Order, the Receiving Party must immediately (a) notify in
19 writing the Designating Party of the unauthorized disclosures, (b) use its best efforts
20 to retrieve all unauthorized copies of the Protected Material, (c) inform the person
21 or persons to whom unauthorized disclosures were made of all the terms of this
22 Order, and (d) request that such person or persons execute the “Acknowledgement
23 and Agreement to Be Bound” that is attached hereto as Exhibit A.

24 11. **INADVERTENT PRODUCTION OF PRIVILEGED OR**
25 **OTHERWISE PROTECTED MATERIAL**

26 When a Producing Party gives notice to Receiving Parties that certain
27 inadvertently produced material is subject to a claim of privilege or other protection,
28 the obligations of the Receiving Parties are those set forth in Federal Rule of Civil

1 Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure
2 may be established in an e-discovery order that provides for production without
3 prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar
4 as the parties reach an agreement on the effect of disclosure of a communication or
5 information covered by the attorney-client privilege or work product protection, the
6 parties may incorporate their agreement in the stipulated protective order submitted
7 to the court provided the Court so allows.

8 12. **MISCELLANEOUS**

9 12.1 **Right to Further Relief**. Nothing in this Order abridges the right of any
10 person to seek its modification by the court in the future.

11 12.2 **Right to Assert Other Objections**. By stipulating to the entry of this
12 Protective Order no Party waives any right it otherwise would have to object to
13 disclosing or producing any information or item on any ground not addressed in this
14 Stipulated Protective Order. Similarly, no Party waives any right to object on any
15 ground to use in evidence of any of the material covered by this Protective Order.

16 12.3 **Filing Protected Material**. Without written permission from the
17 Designating Party, a Party may not file in the public record in this action any
18 Protected Material. A Party that seeks to file under seal any Protected Material must
19 comply with Civil Local Rule 79-5. Protected Material may only be filed under seal
20 pursuant to a court order authorizing the sealing of the specific Protected Material at
21 issue. Pursuant to Civil Local Rule 79-5, a sealing order will issue only upon a
22 request establishing that the Protected Material at issue is privileged, protectable as
23 a trade secret, or otherwise entitled to protection under the law. If a Receiving
24 Party's request to file Protected Material under seal pursuant to Civil Local Rule 79-
25 5 is denied by the court, then the Receiving Party may file the information in the
26 public record pursuant to Civil Local Rule 79-5 unless otherwise instructed by the
27 court.

28 13. **FINAL DISPOSITION**

1 Within 60 days after the final disposition of this action, as defined in
2 paragraph 4, each Party must return all Protected Material to the Producing Party or
3 destroy such material. As used in this subdivision, “all Protected Material” includes
4 all copies, abstracts, compilations, summaries, and any other format reproducing or
5 capturing any of the Protected Material. Notwithstanding this provision, Counsel
6 are entitled to retain an archival copy of all pleadings, motion papers, trial,
7 deposition, and hearing transcripts, legal memoranda, correspondence and expert
8 product, even if such materials contain Protected Material. Outside Counsel of
9 Record need not purge its document management system or backup tapes to
10 eliminate Protected Material. Any such archival copies that contain or constitute
11 Protected Material remain subject to the Protective Order as set forth in Section 4
12 (DURATION).

13 **IT IS SO ORDERED.**

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15 DATED: October 17, 2018
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HON. MAGISTRATE JEAN P.
ROSENBLUTH
UNITED STATES DISTRICT COURT
MAGISTRATE JUDGE

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EXHIBIT A

**ACKNOWLEDGEMENT AND AGREEMENT TO BE BOUND
BY PROTECTIVE ORDER**

I, _____, [print or type full name], of
_____ [print or type full address], declare under penalty
of perjury that I have read in its entirety and understand the Protective Order that
was issued by the United States District Court for the Central District of California
on _____ in the case of *C & S PATENT AND LAW OFFICE vs. BANK OF
AMERICA, N.A.*, Case No. 2:18-cv-05496-DMG-JPR. I agree to comply with and to
be bound by all the terms of this Protective Order and I understand and acknowledge
that failure to comply could expose me to sanctions and punishment in the nature of
contempt. I solemnly promise that I will not disclose in any manner any
information or item that is subject to the Protective Order to any Person except in
compliance with the provisions of the Protective Order.

I further agree to submit to the jurisdiction of the United States District Court
for the Central District of California for the purpose of enforcing the terms of the
Protective Order, even if such enforcement occurs after the termination of this
action.

Date: _____

City and State where sworn and signed: _____

Printed Name: _____

Signature: _____